



Matundura (Suing as the Legal Representative and Administrator of the Estate of Kerebi Matundura) v Matundura & 3 others (Environment & Land Case E009 of 2022) [2023] KEELC 18214 (KLR) (14 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E009 OF 2022**

JM KAMAU, J

JUNE 14, 2023

BETWEEN

**JACKSON ONYWERI MATUNDURA PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE
ESTATE OF KEREBI MATUNDURA**

AND

**SAMWEL OMWERI MATUNDURA 1ST DEFENDANT
JANET BOSIBORI OMWANGE 2ND DEFENDANT
SAMUEL MOKAYA NYAMORAMBO 3RD DEFENDANT
LAND REGISTRAR, NYAMIRA COUNTY 4TH DEFENDANT**

RULING

- 1 The plaintiffs' application dated March 13, 2023 seeks to have reviewed, varied and set aside the court's ruling read, dated and delivered on February 28, 2023 that the Estate of the Late Joshua Omwange Nyamorambo was joined as the 5th defendant to this suit within 7 days and an order awarding the 1st, 2nd, & 3rd defendants costs of Kshs 15,000/=. The grounds upon which the orders are sought are that the Estate of the Late Joshua Omwange Nyamorambo is well represented in the proceedings by the deceased's spouse, one Janet Bosibori Omwange who is a party in the suit as the 2nd defendant. The applicant claims that this fact was not brought to the attention of court at the time of making the orders of the court and that now prejudice would be occasioned to the estate of the deceased. The applicant depones that the facts were never brought to the attention of the court but does not explain the failure to do so. The first 3 defendants/respondents opposed the application *vide* their grounds of opposition dated April 10, 2023, that the application is an afterthought and that the same was filed after the time given for the obedience of the court orders had lapsed.



- 2 Under order 45 rule 1 of the *Civil Procedure Rules*, an application for review can only succeed on the following grounds:

Order 45 - Review

3. Application for review of decree or order [order 45, rule 1.]
1. Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
 2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
- 4 None of those reasons has been brought up in this application. The new facts brought up were still within the knowledge of the applicant when the earlier application was made and there is no error on the face of the record. Secondly, there would be no prejudice occasioned to any party if the Estate of the Late Joshua Omwange Nyamorambo is represented in the case since the widow Janet had been sued in her personal capacity.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 14TH DAY OF JUNE 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Applicant: Ms. Moguche

Defendants: N/A

